

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

PL-II 27676

FILE: B-212782

DATE: March 13, 1984

MATTER OF: Kings Point Manufacturing Co., Inc.

DIGEST:

1. Protest that RFP failed to specify adequately when alternate products would be considered to be acceptable is untimely since the protest concerns an alleged solicitation defect but was not filed prior to the closing date for receipt of initial proposals.
2. Proposal containing a blanket offer to furnish a product satisfactory to the government was properly rejected since the protester did not furnish technical data required by the RFP to establish the acceptability of its product.
3. Protest against test procedures and the results of testing the protester's sample are untimely where the protest was filed more than 10 working days after the protester knew of the procedures used and the results achieved.

Kings Point Manufacturing Co., Inc. protests the procurement of safety harnesses under Request for Proposals (RFP) DLA400-83-R-2770 issued by the Defense General Supply Center (DGSC). According to Kings Point, the government has been derelict in preparing an adequate specification; the RFP failed to define the government's needs adequately; and the government has impermissibly favored harnesses manufactured by a competitor, Rose Manufacturing Company. Kings Point says its proposal should have been accepted, and that the government improperly refused to evaluate a sample harness that Kings Point included with its proposal. When the government did test the sample, Kings Point says, it failed to follow proper test procedures. Kings Point also complains that the government refused to

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accept a second sample which Kings Point offered for testing. We dismiss the protest in part and deny it in part.

Initially, we point out that the protest concerns the resolicitation of the requirement that was the subject of our decision in Kings Point Mfg. Co., Inc., B-210757, September 19, 1983, 83-2 CPD 342. There we denied Kings Point's protest of the cancellation of an invitation for bids based on Military Specification MIL-H-24460A. The invitation was canceled because it was determined, following failures involving harnesses manufactured by Kings Point, that the military specification did not adequately state the government's needs.

On resolicitation, the harness was described in the RFP as a critical part. The RFP restricted award to offers of Rose Manufacturing Company part No. 502644; stated that the government did not have adequate manufacturing or quality assurance data to describe its needs; and cautioned offerors that alternate products would be considered only if shown to be acceptable based on descriptive data furnished with proposals.

According to Kings Point, use of such a solicitation is improper. Kings Point contends that the military specification could have been revised in time to have permitted it to be used in the procurement.

We will not consider this issue. Obviously, Kings Point was aware of this aspect of the RFP before the closing date for receipt of initial proposals. Closing occurred on June 27, 1983. Under section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983), a protest concerning an alleged impropriety in a solicitation which is apparent prior to a closing date for receipt of proposals must be filed before that date. See United States Contracting Corporation, B-210275, August 22, 1983, 83-2 CPD 222. Since Kings Point's original protest was not filed until August 22, this portion of the protest is dismissed as untimely.

Alternatively, Kings Point contends that its proposal was acceptable as submitted. Kings Point offered its part number HSI-280 and qualified its proposal by adding the following:

"AS PER SAMPLE SUBMITTED AND AS PER MIL-H-24460A DTD 7/22/81 AND AMENDMENT #1 DTD 8/17/81 WE ALSO AGREE TO MAKE ANY CHANGES GOVERNMENT WISHES IN ORDER TO COMPLY WITH THE ROSE MFG PART NUMBER 502644."

According to Kings Point, this language was intended to afford the government a choice of alternatives: the government could (1) order the Kings Point part in accord with the sample, (2) insist that the part conform to the military specification, or (3) propose changes needed to assure that the Kings Point part conformed to the salient characteristics of the Rose Manufacturing part.

Even assuming Kings Point's qualifying language conveyed its intended meaning, the proposal was unacceptable. The solicitation stated that the government was not able to fully define its needs, and called for the purchase of the Rose Manufacturing part unless a vendor could furnish sufficient information (concerning its and Rose Manufacturing's products) to show that the proposed alternate product could be safely accepted. While the RFP thus placed the burden to demonstrate acceptability on the offeror, Kings Point did not furnish the technical information required. Kings Point simply tendered a sample (which the government did not request), agreed to conform to a military specification which Kings Point was aware the government believed was inadequate, and offered to incorporate changes which the government had told offerors it was in no position to define. A blanket statement that an offeror will meet all requirements is not sufficient to meet a requirement that offerors demonstrate that their products will meet the government's needs. Executive of Redding, Inc., B-199931, February 10, 1981, 81-1 CPD 86. In the circumstances, we see no basis for objection to DGSC's rejection of Kings Point's proposal.

At Kings Point's urging, and although the RFP did not ask for or promise that samples would be tested, the government agreed to test the sample Kings Point included with its offer. Kings Point objects to what it views as improper test procedures, and contends that although it was

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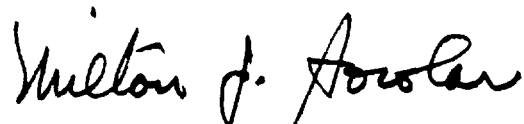
permitted to witness one portion of the test, other tests were conducted from which it was excluded.

Kings Point's complaint, first raised with our Office on January 9, 1984 (when we received a letter from Kings Point dated January 3) is untimely. Section 21.2(b)(2) of our Bid Protest Procedures requires that a protest be filed within 10 working days of the date a protester knows or should have known of his basis for protest. The tests in which Kings Point participated were conducted by the Navy on September 28, 1983. DGSC has indicated that it believes Kings Point was aware at that time that its sample had failed the test. Although Kings Point denies this and insists that the tests it observed were satisfactory, the record is clear that Kings Point knew at least by mid-November that the contracting officer had been notified by the Navy (which actually conducted the tests) of the procedures followed and that the sample had failed. Since Kings Point first learned of its basis of protest in mid-November, the protest is untimely.

We note that Kings Point contends its protest of the test is timely because its original protest, filed in August of 1983, was intended to cover all of the government's activities in this procurement. It is well-settled, however, that each basis of protest must independently satisfy the time limits established by our procedures. Air Tech Industries--Reconsideration, B-211252.2, June 28, 1983, 83-2 CPD 37.

Kings Point's protest of the test related issues, therefore, is dismissed.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States